



**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515**

June 16, 2010

**1001**

The Honorable Julius Genachowski  
Chairman  
Federal Communications Commission  
Washington DC 20554  
445 12th Street, SW

Dear Chairman Genachowski:

We are writing to follow up on previous correspondence between you and Members of the New Jersey Congressional delegation. First we would like to thank you for your previous letters regarding the application filed with the Commission by PMCM TV concerning the proposed move of a commercial television broadcast station to New Jersey, pursuant to Section 331 of the Communications Act of 1934, as amended.

Unfortunately, despite numerous letters from Members of our delegation, your return letters, and even an FCC/New Jersey delegation conference call, confusion regarding the FCC's treatment of this application has not abated.

Much of the debate encircles Section 331 of the Communications Act, Public Law that clearly provides a remedy for states without a VHF license. A remedy that is surprisingly clear – if no commercial VHF channel has been allocated to a particular state, a licensee of a commercial VHF station may notify the FCC that the licensee agrees to the reallocation of its channel to the unserved state, and in that event, the FCC must reallocate that channel and issue an appropriately modified license to the licensee.

As of June 13, 2009, the State of New Jersey was left without a commercial VHF channel as a result of the DTV transition. Then on June 15, 2009, a notification pursuant to Section 331 was filed with the Commission by PMCM TV, LLC, in which PMCM specified the reallocation of Station KVVN, Channel 3, to New Jersey. A request, considering Section 331, that should have been quickly granted, especially since no interference problems were apparent.

Regrettably, in what at times seems like a circumvention of Section 331 and the intent of Congress, the FCC has failed to comply with PMCM TV's notification. Late last year, we learned of a December 18, 2009, letter from the Media Bureau Video Division Chief, apparently denying PMCM's notification, something that you did not mention in your later January 12, 2010, letter to New Jersey Representative Steve

Rothman. Your omission further confused those in the New Jersey delegation trying to vet this issue, and it led to discussions regarding the interaction between your office and the FCC's Media Bureau.

Also in January, several staff members from our offices participated in a conference call with representatives of your Media Bureau and the General Counsel's office. Remarks by the Commission's staff during the call suggested a view that the *second/ last sentence* of Section 331, the "private relief" provision, was outdated. Surprisingly, the FCC staff apparently did not have any problem with the *first sentence* in Section 331 and expressed a willingness to comply with it, a perception that again increased the confusion surrounding this now, long-running matter. Still adding to the perplexity was the staff's suggestion that VHF channels were somehow outmoded. While not a reason to reinterpret Section 331, it is perplexing when trying to analyze the Media Bureau's ongoing steps to allot a low band, VHF channel to Atlantic City.


While we do not at all oppose this December 2009 allotment for Atlantic City, which would provide additional service to the southern portion of our state, this action by the Bureau just does not maximize viewer benefit. The Atlantic City allotment would provide 35dBu service to about 3.5 million New Jersey residents, while PMCM's Middletown Township channel, specified in its notification, would offer service to over 6.4 million, less served state residents, a gain of nearly 3 million viewers. Moreover, the Atlantic City channel proposal does not constitute compliance with the *second sentence* of Section 331.

During the January conference call with the Commission's staff there was reluctance to discuss the specifics of the PMCM notification. While not wishing to violate any prohibition of *ex parte* communications, we still feel a meeting with you would be the prudent approach to clear away the confusion surrounding this matter and move toward the resolution of it. Of course, if any other party needs to be present during the discussions, we certainly have no objections and encourage their participation.


It is our hope that our requested meeting can be accomplished at your earliest convenience.

Sincerely,

  
CHRISTOPHER H. SMITH  
Member of Congress

  
ALBIO SIRES  
Member of Congress

  
STEVEN R. ROTHMAN  
Member of Congress

  
LEONARD LANCE  
Member of Congress

**CHRISTOPHER H. SMITH**

4TH DISTRICT, NEW JERSEY

**CONSTITUENT SERVICE CENTERS**

1540 Kusur Road, Suite A9  
Hamilton, NJ 08619-3828  
(609) 585-7878  
TTY (609) 585-3650

108 Lacey Road, Suite 300A  
Whiting, NJ 08758-1331  
(732) 360-2300

2373 Rayburn House Office Building  
Washington, DC 20515-3004  
(202) 225-3785

<http://chrisemith.house.gov>

**Congress of the United States**  
**House of Representatives**

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COMMISSION ON CHINA**

RANKING MEMBER

DEAN, NEW JERSEY DELEGATION

## *Facsimile Cover Sheet*

**To:**Diane Atkinson**Organization:****Fax:****From:**David Kurl**Date:**6/17/10**Subject:****Number of pages to follow (excluding cover sheet):**2**Comments:**



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

September 1, 2010

The Honorable Christopher H. Smith  
U.S. House of Representatives  
2373 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Smith:

Thank you for your follow-up letter concerning PMCM TV, LLC's request to move a commercial VHF television broadcast station from Nevada to New Jersey, and the Commission's proceeding to allot a VHF channel to Atlantic City, New Jersey. The PMCM proceeding presented some significant issues, and I understand your request for further information.

I have asked Commission staff to contact your office and arrange to meet with you or your staff at your convenience. As you note, however, since both the PMCM request to reallocate channel 3 to Middletown Township, and the allocation rulemaking concerning Atlantic City are restricted proceedings pursuant to the Commission's *ex parte* rules, the parties to the proceedings must be provided an opportunity to participate in this, or any meeting where the merits of the proceedings will be discussed.

The Commission's Media Bureau denied PMCM's request pursuant to Section 331 of the Communications Act to reallocate KVVN(TV), channel 3, from Ely, Nevada, to Middletown Township, New Jersey, on December 18, 2009. The Bureau found that the PMCM request did not comport with the Bureau's interpretation that Section 331 applies only to the reallocation of a channel from one community in a viewing area to another community in the same viewing area. Subsequently, PMCM filed a Petition for a Writ of Mandamus with the U.S. Court of Appeals for the D.C. Circuit, which the court denied on May 12, 2010. PMCM also filed an Application for Review on January 19, 2010, requesting that the full Commission review the Bureau's decision. The staff is evaluating PMCM's Application for Review and will prepare a recommendation for the Commission's consideration.

It appears that your correspondence was not served on the parties to the proceedings as required by the Commission's *ex parte* rules. After consultation with the Commission's Office of the General Counsel, the Media Bureau has provided copies of your letter to the parties and made it part of the record. I appreciate your ongoing interest in bringing a new television station to New Jersey. Please let me know if I can be of any further assistance.

Sincerely,



Julius Genachowski





FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

September 1, 2010

OFFICE OF  
THE CHAIRMAN

The Honorable Albio Sires  
U.S. House of Representatives  
1024 Longworth House Office Building  
Washington, D.C. 20515

Dear Congressman Sires:

Thank you for your follow-up letter concerning PMCM TV, LLC's request to move a commercial VHF television broadcast station from Nevada to New Jersey, and the Commission's proceeding to allot a VHF channel to Atlantic City, New Jersey. The PMCM proceeding presented some significant issues, and I understand your request for further information.

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Sincerely,



Julius Genachowski



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

September 1, 2010

The Honorable Steven R. Rothman  
U.S. House of Representatives  
2303 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Rothman:

Thank you for your follow-up letter concerning PMCM TV, LLC's request to move a commercial VHF television broadcast station from Nevada to New Jersey, and the Commission's proceeding to allot a VHF channel to Atlantic City, New Jersey. The PMCM proceeding presented some significant issues, and I understand your request for further information.

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Sincerely,



Julius Genachowski





FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

September 1, 2010

The Honorable Leonard Lance  
U.S. House of Representatives  
114 Cannon House Office Building  
Washington, D.C. 20515

Dear Congressman Lance:

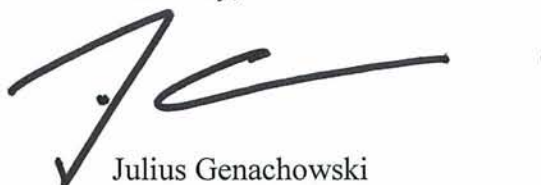
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